

United States Bankruptcy Court

Western District of Michigan
One Division Ave., N, Room 200
Grand Rapids, MI 49503

Daniel M. LaVille
CLERK OF COURT

December 18, 2008

ATTENTION

NATIONAL GUARD AND RESERVISTS DEBT RELIEF ACT OF 2008 EFFECTIVE DECEMBER 19, 2008

The National Guard and Reservists Debt Relief Act of 2008, Pub.L. 110-438, provides a temporary exclusion from the bankruptcy means test for Reservists and members of the National Guard called in to active duty or homeland defense activity for at least 90 days after September 11, 2001. The amendment to section 707 (b)(2)(D) of the Bankruptcy Code will be effective on December 19, 2008, and applies only to cases commenced in the three-year period beginning on the effective date of the Act.

The Judicial Conference has approved an amendment to the Official Form B22A which includes a new Part 1C where qualifying debtors can invoke the temporary exclusion from the means test. **The amended form will be effective on December 19, 2008.** The amended form and Committee Notes can be found at <http://www.uscourts.gov/bankform/index.html>.

Because the temporary exclusion expires 540 days after the debtor is released from active duty or is no longer performing homeland defense activity, the exclusion could expire while a chapter 7 debtor's case is pending and while a motion to dismiss the case may still be filed under 707(b)(2). If the exclusion expires in those circumstances, the Clerk shall give the debtor notice of the need to complete the means test and file with the court no later than 14 days after the exclusion has expired.

Attorneys who file for qualifying members of the National Guard and Reserves will do the following:

1. Open the case as usual and select the appropriate response when prompted at "Presumption arises:" as follows:
 - ◆ If the case is filed by an individual who qualifies for the exclusion, select "no"
 - ◆ If the case is filed by joint debtors, select the response to whatever is appropriate for the debtor who is **not** claiming the exclusion. (Please note that each joint debtor must complete a separate Form B22A according to their individual circumstances)
2. Docket a new event called "Statement of Debtor's Temporary Exclusion from Means Test"
3. If the debtor is subsequently released from active duty during the pendency of the case, the attorney will enter the event, "Release from Active Duty". This event will automatically set the date that the temporary exclusion ends.

If the expiration occurs within the time specified by Rule 1017(e) for filing a motion pursuant to § 707(b)(2), the Clerk shall issue a Notice Requiring Filing of Means Test informing the debtor that the required means test must be filed within 14 days of the expiration of the temporary exclusion period.